

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUN 25 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Petition of the Association for Local )  
Telecommunications Services (ALTS) for a )  
Declaratory Ruling Establishing Conditions )  
Necessary to Promote Deployment of )  
Advanced Telecommunications Capability )  
Under Section 706 of the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

CC Docket No 98-78

**REPLY COMMENTS OF NEXTLINK COMMUNICATIONS, INC.**

NEXTLINK Communications, Inc. ("NEXTLINK") hereby files its Reply Comments in support of the above-captioned petition (the "Petition") filed by the Association for Local Telecommunications Services ("ALTS") for a declaratory ruling under Section 706 of the Telecommunications Act of 1996 (the "1996 Act" or the "Act").

In its initial Comments in response to the Petition, NEXTLINK supported ALTS' request for a declaratory ruling in this proceeding.<sup>1</sup> NEXTLINK explained that in order to ensure that advanced telecommunications services will be available to all telephone customers, the Commission should strengthen its rules for local competition so that customers will have a choice of providers for advanced as well as basic telecommunications service. To ensure that the Incumbent Local Exchange Carriers' ("ILECs") networks are truly open and that such services

<sup>1</sup> Contrary to the suggestion of SBC Communications, Inc., see Comments of SBC Communications, Inc., June 18, 1998, at p. 17, these are not issues where facilities-based telecommunications providers are on one side and resellers on the other, as demonstrated by the supportive comments filed in this proceeding not only by NEXTLINK, but also by other facilities-based carriers. See, e.g., Comments of MCI Telecommunications Corporation., June 18, 1998.

No. of Copies rec'd  
List ABCDE

2112

are available to consumers, the Commission should deny the "Section 706" Bell Operating Company ("BOC") petitions. Despite BOC assertions to the contrary, those petitions have nothing to do with fostering innovation, but rather are part of the BOCs' continuing assault on the bedrock local competition provisions of Sections 251, 252 and 271. Forbearance as requested by the BOCs is unnecessary to promote the development of advanced communications services and would in fact limit the significant role of Competitive Local Exchange Carriers ("CLECs") in offering these services to consumers.

Comments filed by the BOCs in this proceeding further demonstrate the BOCs' fundamental misunderstanding of their dominant position in the telecommunications marketplace and the power they continue to hold over the development of competitive telecommunications services. The fact that ILECs have not yet fully opened their networks to competition further confirms the need for nondiscriminatory access to every network element used for every service offered by an ILEC, including those used for the provision of advanced telecommunications services, to be provided to CLECs to further the 1996 Act's goal of developing competition in telecommunications markets. Once the ILECs' networks have been fully opened, then the need for all regulation, including the resale and unbundling of network elements such as these, may diminish. With the opening of telecommunications networks still in its nascent stages, however, forbearance would be premature and would stifle the development of competition.

ILECs have a continuing obligation to provide nondiscriminatory access to their monopoly facilities for the provision of any telecommunications service. Accordingly, every service offered and every network element used by an ILEC must be considered to be subject to Sections 251 and 252. US West's suggestion that there are times when an ILEC is not in fact an

ILEC,<sup>2</sup> is not supported by the Act and would lead to absurd results. US West blatantly misreads the Act's definition of "incumbent local exchange carrier" as though its restrictions apply only to the extent that an ILEC is operating in certain capacities or engaged in certain activities.<sup>3</sup> The plain wording of the Act's definitions of "local exchange carrier" and "incumbent local exchange carrier,"<sup>4</sup> however, demonstrate that those sections are structured to apply those terms to a person or entity that provides certain services. Nothing in the Act or elsewhere suggests that an ILEC can avoid any or all of the Act's obligations in connection with the provision of services if those services are other than POTS services or if those services do not meet certain definitions. Rather, an ILEC that qualifies as an ILEC continues in that role for each and every service that it offers.

The Commission should not, and consistent with the Act cannot, be drawn into the role of evaluating each service that an ILEC offers to determine whether the ILEC should be subjected to ILEC responsibilities for purposes of that service. Any dichotomy between "basic" services, and "advanced" services is inherently arbitrary as the distinctions between such services continue to blur. Such an approach would serve not only to artificially divide the local exchange market into separate segments, but would also eventually undermine the market for today's so-called "non-advanced" services.<sup>5</sup>

Moreover, CLECs need the ability to obtain access to ILECs advanced capabilities and services as one option for how CLECs will provide these services, even though the ILECs may

---

<sup>2</sup> See Comments of US West, Inc., June 18, 1998, at pp. 11-17.

<sup>3</sup> *Id.* at 11-12.

<sup>4</sup> 47 U.S.C. §§ 153 (26), 251(h).

<sup>5</sup> Similarly, as telecommunications carriers deploy IDLC and UDLC facilities, and as they begin to deploy Next Generation Digital Loop Carrier technologies in their networks, the Commission must reaffirm the right of CLECs to gain *nondiscriminatory* access to the loop for the provision

not be the sole source for such facilities and services. Despite the fact that CLECs may be able to provide these services using equipment from sources other than ILECs,<sup>6</sup> the wide disparity in the relative market positions of ILECs and CLECs ensure that CLECs will require the ability to obtain this and all elements on the ILECs' monopoly networks, on a nondiscriminatory basis, to facilitate the development of local competition.

Furthermore, the fact that interconnection agreements have been signed and competition is beginning to develop does not mean that the Act has functioned precisely as Congress envisioned and that further regulatory protections are unnecessary. Despite the suggestions by several ILECs in this proceeding that interconnection is progressing smoothly,<sup>7</sup> this Petition does not represent the first CLEC effort to express concerns about the full and fair operation of the interconnection process.<sup>8</sup> Even two years after passage of the 1996 Act, the ILECs, who retain exclusive control over bottleneck facilities such as loops, still are not fully committed to providing CLECs with nondiscriminatory access to unbundled loops. While the Act may be functioning to the extent that its broad concepts of interconnection are being implemented, the devil of competition truly is in the details. As a direct result of the numerous issues hindering the interconnection of CLEC and ILEC networks, which NEXTLINK outlined in its initial Comments, telecommunications competition is developing more slowly than expected. The

---

of *all* services, not just lower bandwidth voice services.

<sup>6</sup> See Comments of BellSouth Corporation, June 18, 1998, at 8; Comments of SBC Communications, Inc., June 18, 1998, at p. 10.

<sup>7</sup> See Opposition of GTE, June 18, 1998, at p. 6, Comments of Bell Atlantic on ALTS' Petition for a Declaratory Ruling, June 18, 1998, at p. 9.

<sup>8</sup> See, e.g., Complaint of MCI Telecommunications Corp. and MCImetro Access Transmission Services, Inc., FCC File No. E-98-\_\_\_\_, (March 17, 1998); Comments of AT&T Corp., June 18, 1998, at 3 ("The Commission in fact has scores of filings and other public records which document the efforts of the ILECs to stymie CLEC attempts to gain access to UNEs, collocation, resale and interconnection for both traditional and advanced services.") and n.3.

Commission can address these problems, and expedite the development of competition, by addressing the issues that ALTS raises in the Petition.

As urged in the comments filed by NEXTLINK and other parties to this proceeding,<sup>9</sup> the Commission should examine its collocation rules to address the continuing efforts by ILECs to frustrate the growth of local exchange competition through the use of unreasonable rates, terms and conditions for collocation. The Commission's collocation rules, adopted over four years before passage of the 1996 Act and well before the development of the kind of advanced services at issue here, are ripe for reevaluation at this time. The Commission should revisit the collocation rules to receive additional comment from CLECs that have struggled to enter local markets under the Commission's existing collocation rules. An updated record focused on the needs of CLECs in today's market, including the provision of advanced services and nondiscriminatory access to network elements used to provide such services, will allow the Commission to modify its rules to address the ongoing needs of the competitive local exchange market as it now exists.

Moreover, as NEXTLINK explained in its Comments in this proceeding, the Commission should ensure that ILECs' duty to interconnect extends to all such new equipment deployed. In addition, whereas ILECs have delayed the provision of nondiscriminatory access to Operations Support Systems ("OSS") through the adoption of non-standard proprietary systems that require additional expense and delay before CLECs can make efficient use of those systems, the Commission should confirm that ILECs must provide access to OSS functions for network elements that is equivalent to the OSS functions the ILECs provide to themselves. Finally, for the Commission to give the BOCs interLATA authority before they have complied with the

---

<sup>9</sup> See Comments of AT&T Corp., June 18, 1998, at p. 8-9.

market opening requirements of Section 271 would not only reward the BOCs for refusing to cooperate with the development of local competition, but would also completely eliminate the BOCs' need ever to comply with Section 271.

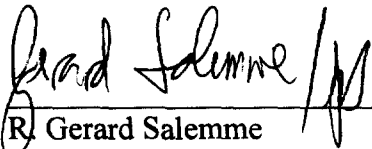
In conclusion, as the market and technology for the provision of advanced telecommunications services continues to develop, the Commission needs to ensure that it allows such development in a way that promotes, rather than hinders competition. Until the ILECs have truly opened their monopoly networks to competition, the Commission should apply all necessary regulatory requirements to the provision of advanced services by the ILECs.

CLECs have demonstrated their willingness to innovate and invest in their networks, but need the tools to do so. Granting ALTS' Petition would be a significant step in this direction. Accordingly, the Commission should issue a declaratory ruling affirming the application of the local competition provisions of the 1996 Act (Sections 251, 252, and 271) to the provision of

advanced services and network elements used to provide such services, and should also reopen its collocation proceeding in order to revise its rules to reflect the concerns of a competitive local exchange market.

Respectfully submitted,

NEXTLINK Communications, Inc.

By:   
R. Gerard Salemmé  
Daniel Gonzalez  
Cathleen A. Massey  
1730 Rhode Island Ave., N.W., Suite 1000  
Washington, D.C. 20036  
(202) 721-0999

DAVIS WRIGHT TREMAINE LLP

Daniel M. Waggoner  
James S. Blitz  
1155 Connecticut Ave., N.W., Suite 700  
Washington, D.C. 20036  
(202) 508-6600

June 25, 1998

## **CERTIFICATE OF SERVICE**

I, James S. Blitz, an attorney in the law offices of Davis Wright Tremaine LLP, hereby certify that on this 25<sup>th</sup> day of June, 1998, a copy of the foregoing "Reply of NEXTLINK Communications, Inc." was served by first class mail, postage prepaid, to:

Brad E. Mutschelknaus  
Jonathan E. Canis  
John J. Heitmann  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W., Fifth Floor  
Washington, D.C. 20554  
Counsel for Association for Local Telecommunications Services

William T. Lake  
John H. Harwood II  
Jonathan J. Frankel  
David M. Sohn  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037  
Counsel for US WEST Communications, Inc.

Kecia Boney  
Dale Dixon  
Lisa B. Smith  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Michael K. Kellogg  
Evan T. Leo  
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.  
1301 K Street, N.W., Suite 1000 West  
Washington, D.C. 20005  
Counsel for SBC Communications, INC.

Mark C. Rosenblum  
Ava B. Kleinman  
AT&T Corp.  
295 North Maple Avenue  
Room 3252J1  
Basking Ridge, NJ 07920

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W.  
Washington, D.C. 20036



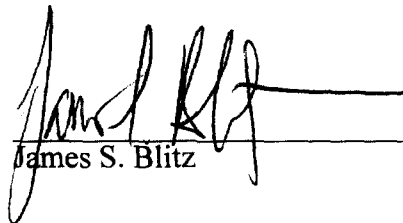
M. Robert Sutherland  
Michael A. Tanner  
BellSouth Corporation  
1155 Peachtree Street, N.E., Suite 1700  
Atlanta, GA 30309-3610

James G. Pachulski  
Robert H. Griffen  
Bell Atlantic Telephone Companies  
1320 North Court House Road, Eighth Floor  
Arlington, VA 22201

and by hand to:

Janice Myles\*  
Common Carrier Bureau  
Federal Communications Commission  
Room 544, 1919 M Street, N.W.  
Washington, D.C. 20554

International Transcription Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036



James S. Blitz

\*including computer disk